THE MIND'S EYE: A REVIEW OF THE PRESS

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ASSASSINATION. A troubling article by Allard K. Lowenstein in the February 19 Saturday Review ("The Murder of Robert Kennedy: Suppressed Evidence of More Than One Assassin?") tells the story of the former New York Congressman's reluctant entry into the case beginning in 1973 when he accepted an invitation to the home of TV spy Robert Vaughn in the belief that "spending half an hour with people who had gone gaga about the Robert Kennedy case would both prove my open-mindedness and help me persuade a good man to avoid further involvement in such foolishness." The autopsy report, which he was shown that day, turned him around. It flatly contradicted the official version of the murder: RFK was shot from behind at point-blank range, not from several feet in front of him where Sirhan Sirhan was standing. Looking further, Lowenstein found compelling evidence that at least ten bullets were fired in the hotel pantry; Sirhan's gun held only eight bullets. In 1975 a panel of ballistics experts agreed that "there was no possible way to determine whether the bullets recovered from the victims (seven bullets from six people) had or had not been fired from Sirhan's gun." The doorframes and ceiling tiles which contained bullet holes and which were in police custody were destroyed by the Los Angeles Police Department on June 30, 1969, while the investigation was still in progress. Critical documents are missing. Lowenstein went to Germany to interview "star" witness Karl Uecker, the man by Kennedy's side who wrestled Sirhan onto a steam table. Firmly repeating his court testimony (which was ignored in the trial), Uecker said that Sirhan fired only two shots. He continued, "It was decided long ago that it was to stop with Sirhan, and that is what will happen." Lowenstein does not know what the truth is, but he does know what happened to him when he tried to find out: he was stonewalled at every turn. "Eventually, reluctantly, against all my instincts and wishes," he writes, "I arrived at the melancholy thought that people who have nothing to hide do not lie, cheat, and smear to hide it." His further speculations on what it all means are disquieting indeed.

ROMAN BRITAIN. A different kind of detective story is told by archaeologist Robin Birley in the February Scientific American ("A Frontier Post in Roman Britain"). Of all the remains from Roman times to be found in England, Hadrian's Wall, erected in about 120 A.D. presumably to defend against the hostile Picts and Scots, most excites the imagination. Says Birley, "Tradition has characterized the border as a savage territory kept under control only by the iron discipline of the Roman troops who garrisoned a chain of lonely forts along Hadrian's Wall. In the past six years archaeological investigations at one such garrison, named Vindolanda, have yielded some notably revealing details of Roman frontier life. . . . It is now known that the garrisons along the wall were far from lonely." A lively civilian community grew up outside the fort and "probably enjoyed a standard of living higher than that of any other people in the area until the middle of the 19th century." It is likely that the same was true of all the forts along the wall. Birley's deductions are drawn from the discovery of at least seven layers of oxygen-free deposits underneath Vindolanda bearing perfectly preserved artefacts and written records so superior to anything previously found that it is probable that the history of the Roman frontier in Britain will have to be rewritten. Footnote: The author estimates that the complete examination of Vindolanda will take over 100 years. So, if you are looking for steady work. . . .

ARGO MERCHANT. It is too early to assess the effects of the 7.6 million gallons of oil spilled by the Argo Merchant off Nantucket December 15. Says Sheldon Novick ("Ducking Liability at Sea," Environment, January-February), "In volume, it was the worst tanker spill in U.S. waters and the tenth largest anywhere in the world. In potential damage, it may yet be the worst on record, as it covers an area in which much of the world's fish and shellfish are harvested." Novick's special report sums up the known facts about this and ten other oilship mishaps in or near U.S. waters between December 15 and January 10.

THE MILLS OF THE GODS

If you have been noticing newspaper stories about Indian land claims in Maine, Mashpee, Martha's Vineyard, and elsewhere in the East, and if you have not been paying close attention, get ready for a shock. The Indians have the white man up against the wall. See Robert McLaughlin's "Giving It Back to the Indians" in the February Atlantic, which details the Maine Indians successful struggle for justice, step by step from 1957 to now.

Situation. The government of the United States is preparing a claim against the State of Maine, on behalf of the Passamaquoddy and Penobscot tribes, to 12.5 million acres comprising 58% of the state and to $25 billion in back rents and damages. The legal basis of the claim was allowed by Judge Edward Gignoux in a favorable disposition of a suit brought against Secretary of the Interior Rogers Morton by Tom Tureen, attorney for the Indians. On Christmas Eve, 1972, the judgment was upheld by the U.S. Circuit Court of Appeals in Boston. No appeal was made to the U.S. Supreme Court. The claim will involve one-third of the state's people and 100 of its cities and towns in an area stretching from Rockland to Eastport and north to Fort Kent. With title to the disputed territory now uncertain, bond issues have been cancelled, $100 million needs to be found--no one knows where--for municipal expenses in the first four months of 1977, realtors and title attorneys will do no business, construction workers will be unemployed, banks will suffer for lack of mortgage money, and capital will begin flowing out of the state. In short, the state's entire economy is gravely threatened. Why? Because no one took seriously the Indians' early attempts simply to talk the matter over.

A Law and a Treaty. The First Congress of the United States approved a measure, the Indian Non-Intercourse Act of 1790, which created a trust relationship between the federal government and the aboriginal inhabitants of the land which became the United States of America. The intent of Congress, as interpreted by repeated Supreme Court decisions beginning with Chief Justice John Marshall, was "to obligate the federal government to assert its constitutional power in order to protect a 'simple, uninformed people, ill-prepared to cope with the intelligence and greed of other races,' and to act 'to forestall fraud' to 'prevent the unfair, improvident or improper disposition by Idians of their lands.' The Non-Intercourse Act states unequivocally that any land transactions between an Indian tribe and a non-Indian party must be supervised and specifically ratified by Congress on behalf of the sovereign United States. Any unratified transaction, it says, is 'null and void.'" Enter the Treaty of 1794 between the Passamaquoddy Tribe and Massachusetts, a document lost to the Indians for 163 years, found in a cardboard box under an old Indian woman's bed in 1957 by John Stevens, governor of Indian Township, the preserve established by the treaty. Its terms, summarized by McLaughlin: "In exchange for nothing the treaty purported to take from the tribe all of their aboriginal lands, with the exception of permanent state protection of their title to ten acres at Pleasant Point, fishing rights, and fifteen islands in the St. Croix River, two islands in Big Lake, and the 23,000 acres that constitute Indian Township itself." Since 1794 all the islands and 6,000 acres of the treaty "grant" have been alienated. It was only these depredations, together with the sorry state of his people, that John Stevens originally sought to remedy. He little knew how far the search would carry him.

Litigation. Is the Treaty of 1794 against the law? Yes. The decision of the U.S. Court of Appeals in Boston rendering the treaty null and void became the law of the land when the last day for an appeal to the Supreme Court, March 22, 1976, passed without a filing by either Maine or the United States. However, said State of Mainers, two legal doctrines based on the power of time were on their side, laches and adverse possession. Laches means that long-neglected rights cannot be enforced. Adverse possession holds that open and hostile control of one party's property or rights by another for a long enough time deprives the original owner of his interest. Alas, laches and adverse possession were

struck down last June 23 by the Federal District Court of Rhode Island in support of a claim brought by the Narragansett Tribe to 3,200 acres of the town of Charlestown, R.I. Judge Raymond Pettine's opinion: "A legion of prior judicial decisions supports (the tribe's) position. The broad principle . . . that state statutes cannot supersede federally created rights has been applied with especial vigor to the question of Indian title as a result of the federal government's 'unique obligation toward Indians.'" Defense of title based on time and power, said Pettine, is "completely futile." Thus the aboriginal claim appears to be unassailable. In the words of Tom Tureen, whose group now represents thirteen eastern Indian tribes, "No legal issues are left to be decided. All we have to do now is prove the extent of the aboriginal holdings. Precedent covers everything else. The hardest part of the case is over."

What Now? Somehow, and soon, the matter must be settled. Three courses of action are open. First, litigation; and that is what will happen if Maine stays on its collision course with defeated legal doctrines. Second, extinguishment of aboriginal title by act of Congress, about which more below. Third, negotiated settlement; this has always been, and remains, the Indians' preference. Congress has the power to extinguish aboriginal title, but it has never used it in the entire history of the republic. On the other hand, Congress does not have the power to extinguish monetary claims. If the Congress should decide to intercede in this case by way of title extinguishment, and the tribes are thus stripped of their direct route to recovering their land, "their only alternative," according to McLaughlin, "will be to press their monetary damage claims of $25 billion with no mercy . . . focusing on the smaller landowners who are unable to pay the amounts involved, and foreclosing on their property." Not a pretty picture. "But the heretofore unthinkable--returning disputed lands to the Indians--must now be considered a plausible, perhaps inevitable outcome. . . . So the tribes wait for understanding to overtake the state."

Thus ends Robert McLaughlin's account. Since he wrote, events have come thick and fast.

On February 2 the Boston Globe reported that Archibald Cox, a long-time summer resident of Penobscot Bay (and thus holder of a disputed title), has entered the case as an unpaid consultant on behalf of the Penobscot Nation and the Passamaquoddy Tribe.

Meanwhile, the Maine Congressional delegation, contrary to its pro-Indian pronouncements of last summer, has been at work on legislation for extinguishment of Indian land title. "The legislation . . . has been approved in principle," the Globe reported February 24, "by Sen. William Hathaway and Sen. Edmund S. Muskie, both Democrats, and Rep. William Cohen and Rep. David Emery, both Republicans. By eliminating land claims, the legislation would ease pressures on real estate and bonding markets in Maine. Officials in the state say that the Indian land claim is undermining state bonds and also paralyzing the real estate industry." Very possibly a bluff, the extinguishment threat looks like a move to gain leverage in a difficult situation. And it has already brought results. The next day's Globe (February 25) carried a Washington story by Stephen Wermiel saying that White House counsel Robert Lipshutz has requested Senator Muskie to postpone legislation. The Carter Administration is responding favorably to a February 10 letter from the Maine delegation asking for an independent assessment of the situation and will appoint an independent evaluator "as part of a multifaceted response by the Administration to Indian claims. . . ." Confidence is building that a non-litigious solution will be found. And Maine sold some bonds last week, $15.4 million worth.

It is not that many miles from Indian Township to the White House, but it took John Stevens twenty years to make the trip.

Mashpee's Troubles. Mashpee--a name that most Cape Cod travelers have known as a place one drives through if cutting over from Route 6 to points between Falmouth and Hyannis--is a growing community. It now finds itself in a predicament identical to Maine's, defending against a suit filed by the Wampanoag Tribe for the recovery of 13,000 of the town's 16,000 acres. "Since the suit was filed in Federal court last August," the Boston Globe reported on January 20, "title to all land in town has been clouded, causing a drought of mortgage money." The Wampanoags offered to settle for all the town's undeveloped lands. On advice of its attorney, James St. Clair, the town said no. Mashpee's latest move (Globe, February 24) has been to ask the Massachusetts banking community to contribute one-tenth of one percent of its investment to the town's legal defense fund. This would yield $100,000 (half of which is committed as a retainer to Mr. St. Clair). The proposal was not greeted with enthusiasm by the assembled bankers when they met last week with the town selectmen in the executive meeting room of the New England Merchants National Bank. Nevertheless, the group agreed to form a study committee to consider ways in which lending institutions might help solve the problem.

Mashpee has also been in touch with the White House, we learn from the February 25 Globe, asking for a mediator "as distinct from an evaluation."

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"The mills of the gods grind slowly, but they grind exceeding fine." When European man first set foot on the western continent, irreversible currents were set in motion. The new world proved to be a bed of inexhaustible inventiveness, a laboratory of scientific and technological genius whose abundance flowed back into the old world and changed the face of the earth. America became the most fecund nation in the history of the planet.

But there was a problem. Our great social experiment, founded on principles of freedom and respect for human rights, had at its root a logical inconsistency--disrespect for the rights of the men and women who were already here. So has it been with the course of empire throughout history. But Americans have always thought of themselves as different. In recent years we have had occasion to see that we are not so different, and perhaps we are chastened.

At any rate, through the workings of our own great structure of law, we are now presented with the opportunity to compensate the injuries we inflicted on the first American people. This curious turn of events brings home the realization that the just society rests on but one thing, honor.

The Mind's Eye is planned as a monthly publication with summaries of noteworthy articles of general interest in the current periodical press. Members of the college community are invited to participate as editors and contributors. Suggestions as to coverage, format, and content are sought. Editor of this issue: Charles McIsaac.